



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-70,722-02

In re TILON LASHON CARTER, Relator

ON MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS,
PETITION FOR WRIT OF MANDAMUS, AND MOTION FOR STAY OF
EXECUTION IN CAUSE NO. 0949973D IN THE 371ST DISTRICT COURT
TARRANT COUNTY

Per curiam. NEWELL, J., filed a concurring statement in which RICHARDSON and KEEL, JJ., joined. YEARY, J., filed a dissenting opinion in which KELLER, P.J., and KEASLER and HERVEY, JJ., joined.

ORDER

We have before us a motion for leave to file a petition for a writ of mandamus, a petition for a writ of mandamus, and a motion to stay relator's execution. In November 2006, a jury convicted relator of the offense of capital murder. The jury answered the special issues submitted pursuant to Texas Code of Criminal Procedure article 37.071, and the trial court, accordingly, set punishment at death. This Court affirmed relator's conviction and

sentence on direct appeal. *Carter v. State*, No. AP-75,603 (Tex. Crim. App. Jan. 14, 2009)(not designated for publication). Relator filed an initial writ of habeas corpus application in the trial court on September 5, 2008. This Court denied relief. *Ex parte Carter*, No. WR-70,722-01 (Tex. Crim. App. Dec. 15, 2010)(not designated for publication).

In June 2016, after the denial of relator's federal writ application, the State moved the convicting court to set an execution date. On September 12, 2016, the convicting court issued an order setting relator's execution date for February 7, 2017.¹ Also on September 12, judicial staff counsel emailed relator's counsel and counsel for the State and informed them that relator's execution had been set for February 7, 2017. On September 15, around noon, the Office of Capital and Forensic Writs (OCFW) received email notice that relator's execution date had been set for February 7, 2017.

On January 27, 2017, relator filed in the trial court a motion to withdraw as counsel and to modify the execution date. He argued that, because Texas Code of Criminal Procedure article 43.141(b-1) provides that notice of the setting of an execution date must be given within two business days, and notice was not given to the OCFW until the third

¹ According to the court's findings, counsel Robin Norris filed a notice of appearance in July 2016, in which he stated that he was relator's only counsel. Also according to the findings, instead of setting the execution at the 91st day as allowed by Texas Code of Criminal Procedure article 43.141, the court set the date into 2017 to accommodate counsel's busy schedule. There is no documentation in the record currently before us to support these findings.

business day, Section (b-2) of the statute requires that his execution be reset.

The State argued that the remedy of reset provided in the statute was not automatic, and because the intent of the statute was satisfied, a modification of the date was not required. The trial court agreed and denied relator's motion. Relator then filed the instant pleadings in this Court, arguing that, because the notice provision of Article 43.141 was violated, the statutory remedy was automatically invoked, and the trial court had a ministerial duty to reset his execution date.

After reviewing all of the pleadings, this Court has determined that relator's execution should be stayed pending this Court's resolution of the issue.

IT IS SO ORDERED THIS THE 3rd DAY OF FEBRUARY, 2017.

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